

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

**IN THE MATTER OF:**

**JOE LINN;**

**Woodbury County, Iowa**

**ADMINISTRATIVE CONSENT ORDER**

**NO. 2012-WW- 04**

**NO. 2012-SW- 07**

**NO. 2012-FP- 01**

TO: Joe Linn  
1110 Preston Blvd.  
Correctionville, IA 51016

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Joe Linn for the purpose of resolving violations related to the illegal disposal of solid waste into the Little Sioux River. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Bryon Whiting, Field Office 3  
Iowa Department of Natural Resources  
1900 N. Grand, Suite E17  
Spencer, IA 51301-2200  
Phone: 712-262-4117

**Relating to legal requirements:**

Jon Tack, Attorney for the DNR  
Iowa Department of Natural Resources  
502 E 9<sup>th</sup> St.  
Des Moines, IA 50319  
Phone: 515-281-8889

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1, and the rules promulgated or permits issued pursuant thereto (water quality); Iowa Code section 455B.279 which authorizes the Director to issue any order necessary to secure compliance

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with or prevent a violation of Iowa Code sections 455B.261 through 455B.281 or the rules adopted pursuant thereto; Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

1. Joe Linn owns a 77 acre parcel located on the west side of the Little Sioux River in Section 1, Township 89 North, Range 42 West, Woodbury County, Iowa. The property is used primarily for agriculture.

2. On November 1, 2011, DNR Field Office #3 received a complaint alleging the dumping of scrap wire, waste tires, and crushed metal cans into the Little Sioux River just north of the area known as the Washta Access. The complainant indicated that he had observed these activities on October 31, 2011 at approximately 2:00 p.m. Photographs by the complainant of an individual in a red truck in the process of dumping the materials were submitted to the DNR.

3. On November 2, 2011, Field Office staff investigated the complaint. The property owner, Joe Linn, admitted that he was the individual in the photographs dumping the material into the Little Sioux River. During the investigation, a pile of barbed wire, woven wire, metal pipe and boards were observed in and along the Little Sioux River on Mr. Linn's property. Mr. Linn stated that he has been placing scrap wire along the river to provide a base for the construction of "weirs." He explained that these flow diversion structures were intended to reduce bank erosion. He further stated that it was his intention to cover the dumped wire with large rocks to create flow diversion structures to reduce the amount of erosion on the west bank of the river. Mr. Linn showed DNR staff several of these structures that he had constructed in the river over prior years. In several of the locations, barbed and woven wire was exposed and washed into the river channel. Mr. Linn was instructed to removal all structures and materials that he had deposited in the Little Sioux River.

4. On November 3, 2011, Mr. Linn telephoned DNR Field Office #3 to report that all previously deposited materials had been removed from the river.

5. On November 10, 2011, a Notice of Violation was issued to Joe Linn based upon the violations documented on November 2<sup>nd</sup>.

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**IV. CONCLUSIONS OF LAW**

1. Iowa Code section 455B.307 and 567 IAC 100.4 prohibit a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. The DNR has documented that Joe Linn violated this provision by dumping solid waste on his property and into the Little Sioux River.

2. Pursuant to Iowa Code section 455.186, a pollutant shall not be disposed of by dumping, depositing or discharging such pollutant into any water of the state, except that this section shall not be construed to prohibit the discharge of adequately treated sewage, industrial waste, or other waste pursuant to a permit issued by the director. The DNR has documented that Joe Linn violated this provision by dumping solid waste into the Little Sioux River.

3. Iowa Code section 455B.275(3) requires that approval be obtained from the DNR if a person desires to construct or maintain an obstruction or deposit on any floodway or flood plain as defined in Iowa Code section 455B.261. Iowa Code section 455B.275(1) prohibits the erection, use or maintenance of obstructions or deposits on the floodway or flood plain which adversely affect the efficiency of or unduly restrict the capacity of the floodway and declares them to be public nuisances. The DNR has documented that Joe Linn violated these provisions by the construction of flow diversion structures in the Little Sioux River.

4. Iowa Code section 455B.275(8) requires the Environmental Protection Commission (Commission) to establish regulatory thresholds by administrative rules. The regulatory thresholds are set forth in 567 IAC Chapter 71. More specifically, 567 IAC 71.4 and 71.12(2) require DNR approval for the construction, operation and maintenance of levees or dikes, and miscellaneous structures, obstructions or deposits on the floodway or flood plain of any river or stream draining more than ten square miles in rural areas. The actions of Joe Linn were subject to these requirements, with which Mr. Linn did not comply.

**V. ORDER**

THEREFORE, the DNR orders Joe Linn and Joe Linn agrees, to pay a penalty in the amount of \$2,000 within 30 days of the execution of this administrative consent order.

**VI. PENALTY**

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter. Iowa Code section 455B.279(2) authorizes the assessment of civil penalties of up to \$500.00 per day per violation of flood plain laws, rules or permits. Iowa Code section 455B.307(3) authorizes the

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assessment of civil penalties of up to \$5,000 per day of violation for the solid waste disposal violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with an administrative penalty of \$2,000. The administrative penalty is determined as follows:

Economic Benefit – There has been no known economic benefit realized by Joe Linn due to the violations documented herein. The metals dumped into the Little Sioux River have scrap value and could have been sold. Subsequent to the investigation, the materials were removed at Mr. Linn's expense. Therefore no penalty is assessed by this order based upon an economic benefit arising from the violations.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As indicated above, substantial civil penalties are authorized by statute. The violations documented herein involve three different programs areas: solid waste disposal, water quality, and flood plain regulation. The actions of Joe Linn created a high likelihood of contamination of the waters of the State. The changes to the stream flow without prior authorization by the DNR created a risk of downstream impacts to human health and the environment. The illegal disposal of solid waste threatens the ground and surface waters of the state. There were multiple days of violations. Based upon these factors, a penalty of \$1,500 is assessed for gravity.

Culpability – Joe Linn failed to comply with solid waste and water quality regulations and failed to contact the DNR or request approval before constructing flow diversion structures. These actions are, at a minimum, negligent and warrant the assessment of an administrative penalty. However, Joe Linn cooperated fully with the DNR during the investigation of this matter and acted promptly to remove the materials from the river. This prompt removal does not negate the fact that solid waste remained in the river for a significant period of time prior to discovery but does mitigate the penalty to be assessed. Based upon these considerations, \$500 is assessed for culpability.


**VII. WAIVER OF APPEAL RIGHTS**

This administrative consent order is entered into knowingly and with the consent of Joe Linn. For that reason Joe Linn waives his rights to appeal this administrative consent order or any part thereof.

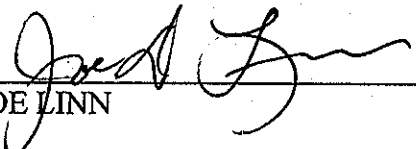
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**VIII. NONCOMPLIANCE**

Failure to comply with this administrative consent order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146, 455B.279 and 455B.307. Total compliance with all provisions of Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order.

  
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ROGER L. LANDE, DIRECTOR  
Iowa Department of Natural Resources

Dated this 17<sup>th</sup> day of  
January, 2012.

  
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JOE LINN

Dated this 9 day of  
FEBRUARY, 2012

Field Office #3; III.A.(1)VI.C; VII.C(4)